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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------|------------------|
| 09/497,836 | 02/03/2000 | Victor S. Moore | BC9-99-044 | 7966 |
| 23334 | 7590 | 06/04/2004 | EXAMINER | |
| FLEIT, KAIN, GIBBONS, GUTMAN, BONGINI & BIANCO P.L. ONE BOCA COMMERCE CENTER 551 NORTHWEST 77TH STREET, SUITE 111 BOCA RATON, FL 33487 | | | FLYNN, KIMBERLY D | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 2153 | |
| DATE MAILED: 06/04/2004 | | | | |

Please find below and/or attached an Office communication concerning this application or proceeding.

| Office Action Summary | Application No. | Applicant(s) |
|------------------------------|-----------------|--------------|
| | 09/497,836 | MOORE ET AL. |
| Examiner | Art Unit | |
| Kimberly D Flynn | 2153 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 23 March 2004.

2a) This action is **FINAL**. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-18 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) Claim(s) _____ is/are allowed.
6) Claim(s) 1-18 is/are rejected.
7) Claim(s) _____ is/are objected to.
8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)
2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
5) Notice of Informal Patent Application (PTO-152)
6) Other: _____.

DETAILED ACTION

1. This Action is in response to an amendment filed March 26, 2004. Claims 1-18 are presented for further consideration.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1, 3-4, 11, 13-14, 16, and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Welles, II et al. (U.S. Patent No 6,532,495) in view of Ravi (U.S. Patent No. 6,292, 834).

In considering claims 1 and 11, Welles discloses a method for transmitting data from a server to a requesting computer, the method comprising the steps of:

receiving a request for a specified data item at the server, the specified data item to be delivered in its entirety prior to being accessed (col. 6, lines 60-65);
receiving a speed indication signal at the server from the requesting computer wherein the speed indication signal comprises an indicated speed of transmission (col. 7, lines 5-16); and

While the system taught by Welles discloses the invention substantially as claimed it does not disclose the step of limiting an average rate of transmission rate of transmission at least a portion of the data item across a data link to the requesting computer to be not greater than the indicated speed, and wherein the input speed is less than the data rate of the data link and the

data rate capacity of the server. However, the uses and advantages of the aforementioned steps were well known to one skill in the relevant art at the time the invention was made as evidenced by Ravi at col. 6, lines 34-44.

In similar art Ravi discloses a system directed to efficiently and reliably streaming data packets from a stream server to a client by optimally utilizing the bandwidth of the connection provided by the computer network. Ravi also discloses wherein the transmission rate of the data stream is dynamically adjusted in response to changes in the bandwidth made available by the computer network for the network connection between the server and the client computer.

Accordingly the server in response to feed back from the client computer dynamically selects transmission rates in order to better the capacity of the network connection. Therefore, it would have been obvious to one skilled in the art to incorporate and implement the aforementioned steps into the system as disclosed by Welles in order to enhance and improve both scalability and reliability of Welles's system for time-altered multimedia streams since it would reduce the difficulty in achieving an efficient data transfer.

In considering claims 3 and 13, the combined system of Welles and Ravi discloses a method further comprising the steps of:

accessing a remote computer indicated in an address included in the request, wherein the remote computer is not one of the server and the requesting computer. and receiving the first data from the remote computer (see Welles, col. 6, lines 56-65, see also figs. 3A(subscriber system), 3B(ISP system), and 3C (Broadcast channel provider system))

In considering claims 4 and 14, the combined system of Welles and Ravi discloses a method further comprising the steps of reading the data item from a memory associated with the server (see, Welles, fig. 3B, (Memory (127), includes download filed (101)).

In considering claims 16 and 18, Ravi further discloses wherein the transmission rate is not related to a speed that is associated with the specified data item. Ravi discloses wherein the transmission rate is adjusted according to the bandwidth or speed (col. 6, lines 36-40), this shows that the two are not related and are different rates.

4. Claims 5, 10, and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gupta in view of Welles.

In considering claims 5, 10, and 15, Gupta discloses a method for transmitting data from a server to a requesting computer, the method comprising the steps of:

accepting a user request for a specified data item at a client computer, (col. 6, lines 30-32);

accepting a user input speed setting at the client computer (col. 6, lines 38-40);

generating a schedule for issuing pause transmission and resume transmission signals based on the user input speed setting, wherein the schedule limits a transmission rate of transmission of at least a portion of the data item across a data link to the requesting computer to be not greater than the user input speed, wherein the input speed is less than the data rate of the data link and the data rate capacity of the server; (col. 6, lines 42-56);

transmitting the user request for a data item to a server computer (col. 6, lines 32-35);

Art Unit: 2153

sending a sequence of pause transmission and resume transmission signals from the client computer to a server computer according to the schedule (col. 7, lines 63-67 through col. 8, lines 1-5).

While Gupta discloses accepting a user request for a specified data item, Gupta does not disclose wherein the specified data item is to be delivered in its entirety prior to being accessed. Nonetheless, downloading a data item wherein the data item is to be delivered in its entirety prior to being accessed is well known in the art as evidenced by Welles. In similar art wells discloses a system for downloading a file over various paths wherein the modules in communication with the application are arranged to provide selectable download options among the available download paths. When a file is downloaded instead of streamed the entire file is delivered prior to being accessed. It would have been obvious to a person having ordinary skill in the art to include the option of having files downloaded or streamed so that the user may have the option of viewing the data immediately or saving it and viewing it later. Therefore the claimed limitation would have been an obvious modification to the system as disclosed by Gupta.

5. Claims 6, 8-9, and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gupta in view of Welles in further view of Ravi.

In considering claim 6, the combined system of Gupta and Welles discloses a method for transmitting data from a server to a requesting computer, the method comprising the steps of: receiving a request for a specified data item at the server, the specified data item to be delivered in its entirety prior to being accessed (col. 6, lines 60-65);

receiving a speed indication signal at the server from the requesting computer wherein the speed indication signal comprises an indicated speed of transmission (col. 7, lines 5-16); and

While the system taught by Gupta and Welles discloses the invention substantially as claimed it does not disclose the step of limiting an average rate of transmission rate of transmission at least a portion of the data item across a data link to the requesting computer to be not greater than the indicated speed, and wherein the input speed is less than the data rate of the data link and the data rate capacity of the server. However, the uses and advantages of the aforementioned steps were well known to one skill in the relevant art at the time the invention was made as evidenced by Ravi at col. 6, lines 34-44.

In similar art Ravi discloses a system directed to efficiently and reliably streaming data packets from a stream server to a client by optimally utilizing the bandwidth of the connection provided by the computer network. Ravi also discloses wherein the transmission rate of the data stream is dynamically adjusted in response to changes in the bandwidth made available by the computer network for the network connection between the server and the client computer. Accordingly the server in response to feed back from the client computer dynamically selects transmission rates in order to better the capacity of the network connection. Therefore, it would have been obvious to one skilled in the art to incorporate and implement the aforementioned steps into the system as disclosed by Gupta and Welles in order to enhance and improve both scalability and reliability of the system for time-altered multimedia streams since it would reduce the difficulty in achieving an efficient data transfer.

In considering claim 8, the combined system of Gupta, Welles, and Ravi further discloses a method further comprising the steps of:

Art Unit: 2153

accessing a remote computer indicated in an address included in the request, wherein the remote computer is not one of the server and the requesting computer; and receiving the first data from the remote computer (see Welles, col. 6, lines 56-65, see also figs. 3A(subscriber system), 3B(ISP system), and 3C (Broadcast channel provider system))

In considering claim 9, the combined system of Gupta, Welles, and Ravi further discloses a method further comprising the steps of reading the data item from a memory associated with the server (see, Welles, fig. 3B, (Memory (127), includes download filed (101)).

In considering claims 17, the combined system of Gupta, Welles, and Ravi further discloses wherein the transmission rate is not related to a speed that is associated with the specified data item. (See Ravi, col. 6, lines 36-40, Ravi discloses wherein the transmission rate is adjusted according to the bandwidth or speed, this shows that the two are not related and are different rates).

6. Claims 2 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Welles in view of Ravi in further view of Birk et al. (U.S. Patent No. 6, 502,139).

In considering claims 2 and 12, although the combined system of Welles and Ravi discloses the invention substantially as claimed, it does not explicitly disclose a method in which the limiting step comprises substeps of: determining a block size based at least on the average transmission rate; determining a period based at least on the average transmission rate; and transmitting a plurality of blocks of data, each of the blocks having a block size and being transmitted at intervals substantially equal to the time period.

However, Birk whose invention is a system for optimizing video on demand transmission by partitioning video programs into multiple segments discloses wherein the segments of a program are of equal size and duration, based on a fixed video rate (col. 25-26, 3. The Tailor-Made NVOD Scheme; See also col. 53, lines 1-20). Birk also discloses that the transmission of the segments is scheduled in a manner that minimizes the aggregate transmission bandwidth, subject to constraints related to client parameters. Given the teachings of Birk, it would have been obvious to a person having ordinary skill in the art modify the combined system of Welles and Ravi to include the steps of determining the block or segment size and transmitting the blocks at intervals equal to a time period so that the transmission scheme used by the system would impose less of a burden on the resources available to the server and the clients by minimizing the transmission bandwidth to fall within the parameters of the of the clients system. Therefore, the claimed limitation would have been an obvious modification.

7. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gupta in view of Welles in further view of Birk et al. (U.S. Patent No. 6, 502,139).

In considering claim 7, although the combined system of Gupta and Welles discloses the invention substantially as claimed, it does not explicitly disclose a method in which the limiting step comprises substeps of: determining a block size based at least on the average transmission rate; determining a period based at least on the average transmission rate; and transmitting a plurality of blocks of data, each of the blocks having a block size and being transmitted at intervals substantially equal to the time period.

However, Birk whose invention is a system for optimizing video on demand transmission by partitioning video programs into multiple segments discloses wherein the segments of a program are of equal size and duration, based on a fixed video rate (col. 25-26, 3. The Tailor-Made NVOD Scheme; See also col. 53, lines 1-20). Birk also discloses that the transmission of the segments is scheduled in a manner that minimizes the aggregate transmission bandwidth, subject to constraints related to client parameters. Given the teachings of Birk, it would have been obvious to a person having ordinary skill in the art modify the combined system of Gupta and Welles to include the steps of determining the block or segment size and transmitting the blocks at intervals equal to a time period so that the transmission scheme used by the system would impose less of a burden on the resources available to the server and the clients by minimizing the transmission bandwidth to comply with the constraints of the clients system. Therefore, the claimed limitation would have been an obvious modification.

Response to Arguments

8. Applicant's arguments filed March 26, 2004 have been fully considered but they are moot in view of the new grounds of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kimberly D Flynn whose telephone number is 703-308-7609. The examiner can normally be reached on M-F 8:30 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glen Burgess can be reached on 703-305-4792. The fax phone numbers for the organization where this application or proceeding is assigned are as follows:

(703-746-72388, for After Final communications

(703) 746-7239, for Official communications

(703) 746-7240, for Non-Official/Drafts.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703-305-3900.

Kimberly D Flynn
Examiner
Art Unit 2153

KF
May 28, 2004


GLEN B. BURGESS
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